aspect of the case, which is the learned president's approach on the question of the credit to be given to Mr. Manikavasagam (PW1). He would reject the evidence of PW1 solely by reason of the failure of the Anti-Corruption Agency officers who interviewed Manikavasagam on the 17th-18th February, 1970, to record a "first statement". I may add here that he has thereby misdirected himself in regard to this failure of the Anti-Corruption Agency officers to record that which he termed a first information in writing, citing *Putra* v. *Sivagnanam & Anor.*[4] The officers, though members of the police force, were not, in my view, exercising functions or powers under Cap. XIII Part V, (Criminal Procedure Code), but were acting under directions of the Anti-Corruption Agency. Manikavasagam stated that no statement was recorded on either of those two days but a statement was taken in May or June of that year. The two Anti-Corruption Agency officers confirmed that no statements were recorded on the 17th or 18th February. PW1 gave an explanation for the material contradiction in his oral statement to the Anti-Corruption Agency officers on the 17th and 18th February, 1970 and his subsequent statement in June, 1970 after he had been advised by Mr. Shankar. I think the learned president also misdirected himself by making this observation:

"The learned defence counsel did not at any time make an application to the court to impeach the credit of P.W.1 by reference to his previous oral statement. Why! In view of the said material contradictions and in the absence of a satisfactory explanation from P.W.1, I hold that the credit of P.W.1 had been impliedly impeached. On that sole ground of pure technicality I acquit and discharge the accused."

I would say this: If defence counsel had seen fit, it would be for him to seek to impeach PW1. Why he did not do so is a question the learned president should have directed to defence counsel but not thereby assume it to be a ground for drawing an adverse inference against the prosecution. An explanation was given by the witness for this apparent contradiction. It was the duty of the learned president to attach such weight to it as he thought proper. In applying general principles regarding accomplice evidence, it is advisable to bear in mind what was said in *Public Prosecutor* v. *Haji Ismail & Anor.*[5]

"A magistrate should first decide whether a witness is an accomplice; then determine on the evidence whether he is corroborated in any material particular; and then, if he is not corroborated, subject the accomplice's evidence to a close scrutiny to satisfy himself that, without corroboration, there is nevertheless evidence which is credible and sufficient to establish the guilt of the accused."

It is to be remembered, however, that in view of what is sometimes referred to as a modification of the law of evidence in regard to accomplice evidence, there is provision in the Prevention of Corruption Act, section 18, which recites that —

"Notwithstanding any rule of law or written law to the contrary, no witness shall, in any such trial or inquiry as is referred to in section 17, be presumed to be unworthy of credit by reason only of any payment or delivery by him or on his behalf of any gratification to an agent or member of a public body."

As Mr. Justice Taylor said in *Soosay Dass* v. *Public Prosecutor*[6] where he referred to a somewhat similar section in the Prevention of Corruption Ordinance 1950:

"The section does not abrogate the established practice nor does it apply to accomplices generally; it simply defines a particular class of accomplice whose complicity is not serious enough necessarily to raise a presumption of discredit."

In view however of what I propose to do in this case, I shall not deal with, or go in detail into, the evidence before the court which may affect or influence the future trial.

The accused has been acquitted at the close of the prosecution without his defence being called, but I do not propose to remit the case to the learned president with a direction that he call upon the accused for his defence. I am mindful of the great expenditure of time and money this course would entail, as the record shows some 19 witnesses were called and the trial took over 3 weeks. In my view, the interests of justice can best be served if I order, as I now do, that there should be a retrial of the accused before another president.

Retrial ordered.

Solicitors: *Joseph & Son.*

TAN HEE LOCK v. THE COMMISSIONER FOR FEDERAL CAPITAL, KUALA LUMPUR & ORS.

[O.C.J. (Abdul Hamid J.) June 9, 1972]

[Kuala Lumpur — Originating Motion No. 30 of 1971]

Administrative law — Certiorari — Audi alteram partem principle — Whether applies in respect of an application to commissioner under Rent Control Act, 1966, s. 18A.

This was an application for an order of *certiorari* to remove to the High Court the order of the Commissioner for the Federal Capital, Kuala Lumpur, to be quashed.

On February 13, 1971, the commissioner made an order under section 18A of the Control of Rent Act, 1966, requiring the applicant, as tenant of premises No. 87 Jalan Tuanku Abdul Rahman, Kuala Lumpur, to deliver vacant possession of the said premises within 6 months from the date of the order, awarding the applicant compensation in the sum of $7,444.

Held, dismissing the application: the decision of the Federal Court in *Mohamed Ashraff & Anor.* v. *The Commissioner for Federal Capital, Kuala Lumpur*[1] applied to the circumstances of this case.

Preliminary point on joint application by owners of separate premises discussed.

Case referred to:-

(1) *Mohamed Ashraff & Anor.* v. *The Commissioner for Federal Capital, Kuala Lumpur & Anor., ante* p. 69.

MOTION.

A. K. J. D'Cruz (*M. A. Gomes* with him) for the applicant.

Chan Siew Yoon for the first respondent.

N. A. Marjoribanks for second and third respondents.

Abdul Hamid J.: This is an application by Tan Hee Lock (hereinafter referred to as "the applicant") for an order of *certiorari* to remove the order of the Commissioner of the Federal Capital, Kuala Lumpur into this court to be quashed.

The Commissioner of the Federal Capital, Kuala Lumpur, made an order on February 13, 1971 under section 18A of the Control of Rent Act, 1966 requiring the applicant (as tenant of premises No. 87, Jalan Tuanku Abdul Rahman, Kuala Lumpur), to deliver vacant possession of the said premises within six months from the date of the order awarding the applicant compensation in the sum of $7,444.

It is revealed that on November 19, 1970, Haji Mohideen s/o Maniyar Mohamed Ebrahim and Mohamed Yasin s/o Naina Mohamed owners of premises No. 87 and 89, Jalan Tuanku Abdul Rahman, Kuala Lumpur (hereinafter referred to as "the landlords") respectively made a joint application to the commissioner for recovery of vacant possession of the said premises from the applicant and two others, the tenants of premises No. 89, Jalan Tuanku Abdul Rahman, Kuala Lumpur, for the purpose of development, the construction of a four-storey office/shop building on the two lots. A copy of the said application was served on the applicant on January 29, 1971.

The commissioner was satisfied that the application was properly made and that the legal requirements under section 18A had been fully complied with by the landlords.

A meeting was held in the Municipal Engineer's Office conference room on Thursday, February 4, 1971. Present at this meeting were the commissioner, some Municipal officers, the landlords, the applicant, Mr. A. K. J. D'Cruz counsel for the applicant and Dato S. P. Seenivasagam counsel for the tenant of premises No. 89. The purpose was to ascertain whether a tenancy existed between the landlords and the applicant, the nature of the tenancy and the amount of rent payable by the applicant per month to enable the commissioner to compute the compensation payable under the law. Nonetheless the commissioner invited the parties to express their views.

At this meeting, counsel for the applicant argued that a formal inquiry should be held so that witnesses could be called and evidence adduced to challenge the statements made by the landlords in their application. The commissioner postponed the meeting till February 19, 1971 in order to make a ruling.

On February 10, 1971 at a meeting where the same parties were present, counsel for the applicant again made the same request, this time in writing. The commissioner ruled that no formal inquiry was necessary under section 18A. Notwithstanding the ruling, the commissioner nevertheless invited counsel for the applicant to challenge the evidence of the landlords. He further invited counsel to make submission on the three conditions under section 18A. A number of points on law and fact were raised. On February 13, 1971, the commissioner made the order granting the application of the landlords.

The grounds on which the application is made are as follows:—

That the said order was —

(a) wrong in law;

(b) contrary to the provisions of section 18A of the Control of Rent Act, 1966;

(c) in excess of the jurisdiction of the commissioner;

(d) contrary to natural justice; and

(e) void, ineffective and does not bind the applicant as the provisions of section 18A of the Control of Rent Act, 1966 violates Article 8 of the Constitution.

Mr. D'Cruz counsel for the applicant in his written submission stated that he was relying mainly on grounds (c) and (d).

Before I proceed any further, I should like to deal with the preliminary point raised by the applicant's counsel. He submitted that the said premises were separately owned by each of the landlords and, as such, they could not make a joint application. In my view, there is no merit in the argument. Apart from the fact that there is nothing in the Act which prohibits two separate owners who desire to jointly develop their separate properties from making a joint application, it is apparent that in this particular case, the landlords had by this time concluded a written agreement to transfer a half share in the respective premises to each other for the purpose of creating joint ownership of the premises in question.

As regards the grounds raised by the counsel for the applicant, it would seem that in view of the Federal Court judgment in *Mohamed Ashraff & Anor.* v. *The Commissioner for Federal Capital, Kuala Lumpur & Anor.*,[1] there is hardly any necessity for me to deal with any of them. Substantially the same grounds were raised in that case and Ong Hock Sim F.J. in the course of his judgment said:

"We are also in agreement with the Chief Justice that section 18A leaves no discretion with the commissioner upon proof of compliance with section 18A (1)(a)(b) and (d) already quoted in his judgment. In the absence of any provision as to the mode of inquiry, we are of the view that no question of failure to observe the principles of natural justice can arise. The commissioner's functions under section 18A appear to us to be purely administrative and any act pursuant thereto is not amenable to *certiorari*."

In the instant case, it is clear from the commissioner's affidavit sworn on October 7, 1971 that he was satisfied the three conditions required under section 18A had been fully complied with. The applicant therefore had no say at all in the matter. Ong C.J. in dismissing the application made by the appellants in the High Court said:

"... In the public interest Parliament had thought fit to put shackles upon the rights of the landlord of controlled premises to deal with his property as he deems fit. Decontrol is nothing more than a measure to restore those rights to their pristine fulness. Section 18A is clearly one of those measures. It imposes three conditions to be fulfilled by the landlords. Once they succeed in so doing, my view is that tenants have no say at all in the matter. The discretion of the commissioner whether or not to make an order is of a limited nature. The conditions imposed by paragraphs (b) and (c) are such that the evidence of future financial capability on the part of the landlord to carry out the proposed development may leave the commissioner in doubt regarding its feasibility. Then, of course, it would be right and proper for him to make no order. Where however, the evidence offered is satisfactory, I think it would be an abuse of his powers to reject any application, since proof of compliance with paragraphs (b) and (c) leaves him with no discretion at all unless he deliberately ignores the law. Such proof is purely a question of fact. In making up his mind the commissioner would not, I think, be carrying out a judicial or quasi-judicial duty."

For reasons which I have stated I would therefore dismiss this application with costs.

Application dismissed.

Solicitors: *A. K. J. D'Cruz; Shook Lin & Bok; Lovelace & Hastings.*

LETCHUMI & ANOR. v. THE ASIA INSURANCE CO. LTD.

[F.C. (Ong C.J. (Malaya), Gill F.J. and Abdul Hamid J.) June 16, 1972]

[Johore Bahru — Federal Court Civil Appeal No. 118 of 1971]

Insurance — Motor taxi — Hiring of — Subsequent re-hiring of taxi — Driver not authorised to drive the taxi — Express prohibition by owner — Effect of.

Road Traffic — Third party risks — Insurance coverage — Duty of insurers to satisfy judgments against persons insured in respect of third party risks — Road Traffic Ordinance, 1958, s. 80.

Practice and Procedure — Appeal — New point raised on appeal — Discretion of appellate court to consider it in the interest of justice.

This appeal was against the dismissal of a claim against the respondents under section 80(1) of the Road Traffic Ordinance.

On February 26, 1962, a taxi driver named Raman sustained fatal injuries in a collision with another taxi driven by one Quek Ah Seng. It was clear that the insured/owner had hired the taxi out to one Lim Siew Liew who, on this particular occasion, had re-hired the vehicle to the said Quek. On May 27, 1965, the High Court awarded the appellant damages against Quek Ah Seng in the sum of $26,700. However, the owner of the car was insured at the relevant date against third party risks, with the respondents. Therefore, the appellants made a claim against the respondents under section 80(1) of the Road Traffic Ordinance, which was dismissed.

In this appeal, a new point was raised by the appellants as to the question whether there was a subsequent ratification by the insured, on receipt of $15 from Lim Siew Liew as hiring charges, of the grant of permission by Lim to Quek to drive the taxi.

The point in issue was whether Quek was one of the persons insured by the policy.

Held, dismissing the appeal: (1) There were no circumstances in this case from which it could be implied that the owner authorized Quek to drive the taxi. The uncontroverted evidence showed that the said Lim Siew Liew had been expressly prohibited by the insured from allowing the vehicle to be driven by any other person. Moreover, the acceptance of the payment for the hiring charges was not a ratification by the insured of the unauthorized re-hiring of the taxi to Quek;

(2) although the point regarding ratification was not raised before the trial judge, the appellate court would consider it in the interests of justice.

Per curiam: An omission, at the trial, by inadvertance or otherwise, to canvass an arguable point, is not the same thing as abandoning it altogether — which would have precluded the court from re-opening and re-considering the matter.

Cases referred to:-

(1) *Ormrod* v. *Crosville Motor Services Ltd.* [1953] 1 W.L.R. 409; [1953] 1 W.L.R. 1120, C.A.

(2) *Freeman* v. *Rosher* 13 Q.B. 780; 116 E.R. 1462.

(3) *Marsh* v. *Joseph* [1897] 1 Ch. 213 at pp. 243, 246.

(4) *Imperial Bank of Canada* v. *Begley* [1936] 2 All E.R. 367.

(5) *Manap bin Mat* v. *General Accident, Fire and Life Assurance Corpn. Ltd.* [1971] 1 M.L.J. 134.

(6) *Digby* v. *General Accident, Fire and Life Assurance Corpn. Ltd.* [1943] A.C. 121.

(7) *Monk* v. *Warby* [1935] 1 K.B. 75.

FEDERAL COURT.

P. M. Williams for the appellants.

Leong Wai Yin for the respondents.

Ong C.J. (Malaya): On February 26, 1962 a taxi-driver named Raman sustained fatal injuries in a collision with another taxi driven by one Quek Ah Seng. The appellants are Raman's legal personal representatives. On May 27, 1965 the High Court at Johore Bahru awarded them damages against Quek Ah Seng in the sum of $26,700 and costs. Quek was driving a vehicle of which the owner was insured at the relevant date against third party risks with the Asia Insurance Co. Ltd. The appellants' claim, made subsequently against this insurance company under section 80(1) of the Road Traffic Ordinance 1958, was dismissed by the High Court at Johore Bahru on October 20, 1971. They now appeal against such decision.

Section 80(1) is the well-known provision making it obligatory on insurers to satisfy judgments obtained against persons insured in respect of third party risks — "being a liability covered by the terms of the policy". The question in issue was whether Quek, while driving the taxi, was one of the persons insured by the policy. The learned trial judge held that Ng Chong Ern, the owner of the taxi who was "the insured" under the policy, had only authorised Lim Siew Liew, a licensed taxi-driver then hiring the vehicle, to drive it and that Quek had no authority, express or implied, from the insured to do so; consequently the insurers were not liable under section 80(1) to indemnify Quek against the judgment obtained by the appellants against him.

At the trial of the action the appellants, as plaintiffs, called no evidence, but relied only on these agreed facts: (a) that the taxi driven by Quek was owned by Ng Chong Ern and it was insured against third party risks by the defendants; (b) that the policy covered Ng Chong Ern and any person driving the taxi on his orders or with his permission.

Under the policy issued to Ng Chong Ern the insurers undertook to indemnify any "authorised driver" against third party claims and in the Schedule "authorised driver" is defined as any of the following: (a) the insured; (b) any licensed taxi-driver driving on the insured's order or with his permission; (c) any other person provided he is in the insured's employ *and* is driving on his order or with his permission.

In my opinion the appellants' claim to indemnity, under the terms of the policy, could only succeed if they established that Quek was driving the taxi with the permission of Ng Chong Ern. Quek was not in the insured's employ, so that he must be brought within the terms of paragraph (b) to be an authorised driver under the policy. Alternatively, dehors the policy, they could have founded their claim on the provisions of section 80(1) of the Ordinance which reads: —

"If, after a certificate of insurance has been delivered under sub-section (4) of section 75 of this Ordinance to the person